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SUPREME COURT, U.S.

No. 07-1471

In The Supreme Court of the United States

WILLIAM R. YEE,

Petitioner,

v.

STATE COURT ADMINISTRATIVE OFFICE, ET AL.,

Respondents.

Respondents Michael J. Guss and Harvey Kruse, P.C.'s Brief in Opposition to Petition For Writ Of Certiorari To The United States Court of Appeals For the Sixth Circuit

BARRY B. SUTTON
Counsel of Record
DALE R. BURMEISTER
HARVEY KRUSE, P.C.
1050 Wilshire Drive, Suite 320
Troy, MI 48084
(248) 649-7800

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INTRODUCTION

This case involves a medical doctor and licensed attorney who has had a substantial amount of contact with the Michigan judicial system concerning land he owned on Bambi Lake and a bitter divorce and custody battle. Both the criminal justice system and the civil side of Michigan's legal system have had brushes with Mr. Yee.

The only contacts that Harvey Kruse, P.C., and Michael J. Guss, a shareholder in the firm's Flint, Michigan office, have had with Mr. Yee arise out of a civil lawsuit he filed a number of years ago. Suffice it to say that Mr. Yee was unsuccessful in that case and now has sued Harvey Kruse, P.C. and Mr. Guss for supposedly joining some sort of civil conspiracy during the course of their representation of an adverse party in that litigation. The only allegation in the entire 163-page complaint containing 709 separately numbered paragraphs referring specifically to Mr. Guss and Harvey Kruse appears at Page 48 in Paragraph 189. In that paragraph, everyone from the Governor of the State of Michigan to the Department of Natural Resources to Harvey Kruse, P.C. and a former associate, Alan R. Sullivan, are alleged to have joined a conspiracy to deprive Mr. Yee of his civil rights, his property, and his money. There are absolutely no other allegations specifically targeted at Harvey Kruse, P.C. or Mr. Guss in the entire complaint.

As will be demonstrated below, such conclusory and nonspecific allegations do not suffice under Michigan law, and, as a result, the District Court properly granted Respondents' motions to

dismiss for failure to state a claim. In addition, based solely on the allegations in Mr. Yee's complaint, the District Court also relied upon a variety of other valid and proper legal principles to dismiss all of the defendants. The Sixth Circuit Court of Appeals subsequently affirmed without oral argument.

ARGUMENT

I. PLAINTIFF'S CLAIM AGAINST HARVEY KRUSE, P.C., AND MICHAEL J. GUSS FOR JOINING A CONSPIRACY IS INSUFFICIENT AS A MATTER OF LAW

In order to state a valid claim for civil conspiracy, a plaintiff must plead the following essential elements: 1) concerted action; 2) by a combination of two or more persons; 3) to accomplish an unlawful purpose; or 4) to accomplish a lawful purpose by unlawful means. *Fenestra, Inc. v. Gulf American Land Corp,* 377 Mich. 565, 593, 141 N.W.2d 36 (1966). See also *Zmija v. Baron,* 119 Mich. App. 524, 537, 326 N.W.2d 908 (1982) (Walsh, J. concurring in part); *Mays v. Three Rivers Rubber Corp.,* 135 Mich. App. 42, 48, 352 N.W.2d 339 (1984).

In addition, there can be "no *civil* conspiracy if [defendants] were acting as agents within the scope of the agency agreement." See, e.g., *Landmark Savings and Loan v. Loeb Rhoades, Hornblower and Co.,* 527 F.2d 206, 209 (E.D. Mich. 1981); *Hodges v. Tomberlin,* 510 F.2d 1280, 1286 (S.D. Ga. 1980).

In *Blair v. Checker Cab Co.,* 219 Mich. App. 667, 674, 558 N.W.2d 439 (1996), the Michigan

Court of Appeals held that "an agent or employee cannot be considered a separate entity from its principal or corporate employer, respectively, 'as long as the agent or employee acts only within the scope of his agency (or) employment.'" *Id.* quoting *Metroclub, Inc. v. Schostak Bros. & Co., Inc.*, 80 Mich. App. 417, 420; 280 N.W.2d 553 (1979) ("an attorney often acts as his client's agent, and his authority may be governed by what he is expressly authorized to do as well as by his implied authority.") *Unipro Prop., Inc. v. Morganrath*, 260 Mich. App. 442, 447; 678 N.W.2d 638 (2004).

As these cases indicate, merely alleging all of the essential elements of a civil conspiracy – which Petitioner failed to do in this case – is not enough. In addition, a plaintiff must also plead that the attorney or the law firm acted outside the scope of their agency in conspiring to deprive someone of their rights. No such allegations have been made in this case and, therefore, the District Court's dismissal of this case was affirmed by the Sixth Circuit.

II. MR. GUSS AND HARVEY KRUSE, P.C., ADOPT AND INCORPORATE BY REFERENCE THE ARGUMENTS ADVANCED BY APPELLEES IN THE SIXTH CIRCUIT AND RESPONDENTS IN THIS COURT

Scores of other parties will be filing or already have filed briefs in this case. Rather than burden this Court with a repetitive recitation of the numerous legal principles the District Court relied upon, Mr. Guss and Harvey Kruse, P.C., adopt and

incorporate them by reference pursuant to Fed. R. App. P. 28(i). In addition, the briefs filed by the Appellees in the Sixth Circuit did an excellent job of reviewing the law, and those are all hereby adopted and incorporated by reference as well.

In a nutshell, however, the District Court and the Sixth Circuit relied upon at least three independent legal grounds that were each sufficient to dispose of this case: 1) the *Rooker-Feldman* doctrine; 2) collateral estoppel; and 3) the statute of limitations. Each is briefly addressed below.

A. THE ROOKER-FELDMAN DOCTRINE PREVENTS RE-LITIGATION OF STATE COURT DECISIONS

The *Rooker-Feldman* gets its name from two cases decided by the United States Supreme Court. In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 68 L. Ed. 392, 44 S. Ct. 149 (1923), a lawsuit was filed challenging an Indiana state court judgment that had been affirmed by the Indiana Supreme Court. Even though the case involved claims that the United States Constitution had been violated, the United States Supreme Court concluded that the only way to challenge the Indiana Supreme Court's decision was by way of an appeal directly to the United States Supreme Court, not a separate original proceeding started in a United States District Court.

Similarly, in *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983), a litigant who was unsuccessful in the federal system brought a second

round of litigation in the United States District Court, in which it sued the District of Columbia Court of Appeals. Again, the United States Supreme Court rejected the litigants' circuitous appeal and held that the only remedy the unsuccessful litigants had upon losing in the District of Columbia Court of Appeals was appealing directly to the United States Supreme Court, not initiating a separate proceeding.

In other words, the *Rooker-Feldman* doctrine provides that lower federal courts lack subject matter jurisdiction to engage in appellate review of state court proceedings. Thus, "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States District Court, based on the losing party's claim that the state judgment itself violates the loser's federal rights. *Johnson v. De Grandy,* 512 U.S. 997, 1005-06, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994).

In this case, the Petitioner's entire case is premised on the assertion that the various state court proceedings in which he has been involved over the years have been wrongly decided. Under the *Rooker-Feldman* doctrine, the District Court lacks jurisdiction over these claims. The Petitioner has unsuccessfully litigated, many times, the Bambi Lake water level issue in circuit courts in Michigan, in the Michigan Court of Appeals, and in the Michigan Supreme Court. Undeterred, he has now initiated a new round of litigation in District Court seeking a remedy for wrongs he alleges that the Michigan state judicial system have visited upon him. The *Rooker-Feldman* doctrine prevents this circuitous manner of appeal.

B. THE DOCTRINE OF COLLATERAL ESTOPPEL PREVENTS LITIGANTS FROM RE-LITIGATING ISSUES THAT HAVE BEEN FULLY LITIGATED IN OTHER PROCEEDINGS

Even if the *Rooker-Feldman* doctrine does not apply, the District Court in this case also concluded that the doctrine of collateral estoppel prevents a re-litigation of these issues in the federal system. *Peterson Novelties, Inc. v. City of Berkley,* 305 F.3d 386, 394 (6th Cir. 2002), reiterated the general proposition that state court judgments have preclusive effect, citing *Migra v. Warren City School District Board of Education,* 465 U.S. 75, 81, 79 L. Ed. 2d 56, 104 S. Ct. 892 (1984). "Where issues of fact or law have been finally decided by a court of competent jurisdiction in one legal action which are essential to the maintenance of another legal action, it is universally held that the second action must fail." *Jones v. Chambers,* 353 Mich. 674, 680 (1958). In this case, Petitioner's complaint, filed in the United States District Court for the Eastern District of Michigan, challenges the propriety and validity of numerous state court decisions and orders. Mr. Yee has fully litigated those issues in four separate state trial courts and in numerous appeals within the Michigan appellate system. He has also, on at least two occasions, filed Applications for Leave to Appeal to the Michigan Supreme Court and has at least twice sought a Writ of Certiorari from this Court in connection with the state court proceedings he was pursuing. He cannot now get around all of those decisions by starting an entirely new round of litigation in the federal system. For that reason, both the District Court and the Sixth Circuit

concluded that the doctrine of collateral estoppel barred Mr. Yee from attempting yet another re-litigation of claims that he has lost time and time again.

C. THE STATUTE OF LIMITATIONS HAS RUN ON PETITIONER'S CLAIMS

In addition to the *Rooker-Feldman* doctrine and the application of collateral estoppel principles, Petitioner's complaint against Michael Guss and Harvey Kruse, P.C., is also barred by the statute of limitations.

The statute of limitations for most of the claims being made by Mr. Yee against these two Respondents is three years. MCLA 600.5805(10). See also *Chippewa Trading Co. v. Cox,* 365 F.3d 538, 543 (6th Cir. 2004). For example, to the extent that Petitioner's claims relate to the infliction of emotional distress, state civil rights claims, and civil conspiracy claims, the three year statute of limitations for personal injury cases in Michigan applies. See, *e.g., Nelson v. Ho,* 222 Mich. App. 74, 564 N.W.2d 482, 487 (1997) (emotional distress claims), *Timko v. Oakwood Custom Coating Inc.,* 244 Mich. App. 234, 625 N.W.2d 101, 204 (2001) (state civil rights claims) and *Mays v. Three Rivers Rubber Corp,* 134 Mich. App. 42; 352 N.W.2d 339 (1984) (civil conspiracy claims). Even Petitioner's RICO claims are subject to a four year statute of limitations. 18 U.S.C. § 1961, *et seq.; Rotella v. Wood,* 528 U.S. 549, 553, 120 S. Ct. 1075, 145 L. Ed. 2d 1047 (2000).

Since all of the Petitioner's claims arise out of

an alleged "conspiracy" between the Respondents which dates back to April of 2000, and since Petitioner did not file his complaint in this case until over six years after these claims arose, they are all clearly barred as a matter of law. Both the United States District Court and the Sixth Circuit Court of Appeals agreed, dismissing his claims against Michael Guss and Harvey Kruse, P.C. There is no reason for the highest Court in the land to revisit that decision.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

BARRY B. SUTTON
Counsel of Record
DALE R. BURMEISTER
HARVEY KRUSE, P.C.
1050 Wilshire Drive, Suite 320
Troy, MI 48084
(248) 649-7800